



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 3553-99

20 March 2000

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that on 29 June 1989, a medical board gave you diagnoses of tear, anterior cruciate ligament, right knee, and low back pain, and referred your case to the Physical Evaluation Board (PEB). The medical board report indicates that although you had a mild knee condition, with "adequate range of motion...status post anterior cruciate repair", your prolonged and continued knee pain indicated that it was unlikely that you would "recover to full military duty." You were not taking any pain medication at that time, and you declined a second surgical procedure on your knee. With regard to your back, it noted that you had decreased range of motion on flexion and extension, no palpable muscle spasms, and pain on palpation of the lumbosacral spine. Standing lateral/anterior lateral spine x-ray series results were interpreted as normal. On 19 July 1989, the Record Review Panel (RRP) of the PEB made preliminary findings that you were unfit for duty because of the knee condition, which it rated at 10%. The back condition was not rated because it was not considered separately unfitting. You accepted the findings of the RRP on 22 July 1989, and you were discharged by reason of physical disability on 31 August 1989. The Department of Veterans Affairs (VA) initially awarded you ratings of 20% for your knee and back conditions effective 1

September 1989, for a combined rating of 40%. The rating for the knee condition was increased to 30% in 1991, and the rating for the back condition was increased to 60% in 1993.

The Board was not persuaded that your knee condition was ratable at or above 20% disabling at the time of your discharge, or that your back condition was separately ratable at that time. The fact that the VA assigned a rating to the back condition is not probative of your contentions of error and injustice, because that agency, unlike the military departments, awards disability ratings without regard to the issue of fitness for military service. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director